

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CENTRAL STATES, SOUTHEAST AND)
SOUTHWEST AREAS PENSION FUND;)
and ARTHUR H. BUNTE, JR., as Trustee,)

Plaintiffs,)

v.)

PHBC, LLC, a Michigan limited liability company;)
ML LAND COMPANY, L.L.C., a Michigan)
Limited liability company; L & L LAND)
COMPANY, LLC f/k/a L & L LAND COMPANY)
LIMITED PARTNERSHIP, a Michigan limited)
liability company; and MICHAEL LAUTH,)
an individual)

Defendants.)

Case No. 16-cv-8439

Judge John Robert Blakey

Magistrate Judge Sheila Finnegan

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

NOW COME Plaintiffs, Central States, Southeast and Southwest Areas Pension Fund (the "Fund") and Arthur H. Bunte, Jr., trustee, by and through their counsel, and hereby submit their Motion for Summary Judgment against all four Defendants: PHBC, LLC ("PHBC"), ML Land Company, L.L.C. f/k/a M and G Land Company, L.L.C. ("ML Co."), L & L Land Company, LLC f/k/a L & L Land Company Limited Partnership ("L&L"), and Michael Lauth.

In support of this Motion, Plaintiffs state that all three entity Defendants are liable for the withdrawal liability incurred as a result of non-party Port Huron Building Supply Co.'s ("PHBS") 2012 partial withdrawal from the Fund because on the withdrawal date all three entity Defendants were "trades or businesses . . . under common control" with PHBS within the meaning of 29 U.S.C. § 1301(b). *See also, e.g., Cent. States Se. & Sw. Areas Pension Fund v. Messina Prods., LLC*, 706 F.3d 874, 878 (7th Cir. 2013) (under section 1301(b) all trades or business under common control with a withdrawing entity are liable for that entity's withdrawal

liability). Further, Defendant Michael Lauth is liable for the withdrawal liability because the pre-withdrawal conversion of Defendant L&L from a partnership to an LLC is to be disregarded, as it was done for a principal purpose of eliminating the personal liability Michael Lauth would have had for the withdrawal liability as an L&L general partner. *See* 29 U.S.C. § 1392(c) (where “a principal purpose of any transaction is to evade or avoid” withdrawal liability, then withdrawal liability “shall be determined and collected” without “regard to such transaction.”). As a result, L&L should still be treated as a partnership of which Michael Lauth is a general partner, making him personally liable for the withdrawal liability.¹

WHEREFORE, for the reasons set forth above and in Plaintiffs’ memorandum in support of this Motion, Plaintiffs request that this Court enter summary judgment in the Fund’s favor and against Defendants, jointly and severally, for the principal amount of the withdrawal liability (\$2,114,166.93), plus interest thereon, an amount equal to the greater of that interest or liquidated damages, attorneys’ fees and costs, and post-judgment interest. *See* 29 U.S.C. §§ 1132(g)(2), 1451(b).²

June 22, 2018

Respectfully submitted,

/s/ Andrew J. Herink
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¹ Plaintiffs are not moving for summary judgment on their claim that Michael Lauth was operating an unincorporated trade or business on the date of withdrawal. (See Dkt. No. 60 (Plaintiffs’ First Amended Complaint), ¶¶ 17-18, 63-64.)

² Plaintiffs have not provided evidence of the Fund’s section 1132(g)(2) damages because the amount of the interest due changes on a daily basis. Plaintiffs will establish these amounts by motion and affidavit should the Court grant their summary judgment motion.

CERTIFICATE OF SERVICE

I, Andrew J. Herink, one of the attorneys for the Central States, Southeast and Southwest Areas Pension Fund, certify that on June 22, 2018, I caused the foregoing *Motion for Summary Judgment* to be served on all parties via the Court's electronic filing system.

June 22, 2018

/s/ Andrew J. Herink

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